

No. 9989.

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IN THE

United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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HYMAN HOWARD GOODMAN,

*Appellant,*

*vs.*

UNITED STATES OF AMERICA,

*Appellee.*

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PETITION FOR REHEARING.

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FILED

JUL 6 - 1942



## TOPICAL INDEX.

	PAGE
Argument .....	8
Certificate of Counsel.....	10

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## TABLE OF AUTHORITIES CITED.

	PAGE
Ghadiali v. United States, 17 Fed. (2d) 236.....	9
Rendleman v. United States, 38 Fed. (2d) 779.....	9
Terry v. United States, 51 Fed. (2d) 49.....	9



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*To the Honorable United States Circuit Court of Appeals  
of the Ninth Circuit and to the Judges Thereof:*

This is a petition for rehearing after a decision by this Honorable Court reversing the conviction of appellant. The opinion of the Court was filed June 12, 1942.

I.

Appellee urges there was evidence in the record from which the jury could infer that the appellant knew the industrial diamonds in question were to be exported without a license.

Direct testimony of Takahashi, one of the defendants, who appeared as a witness for the government:

"I saw Goodman about the beginning of June of this year at my home on 58th street, Los Angeles.

My first conversation with him pertaining to industrial diamonds was at my home during June.

Q. Would you state what the conversation was?

A. I said that I had an order for diamonds from Japan and if I were able to fill that order, I said I would like to purchase them.” [R. 20.]

\* \* \* \* \*

“Q. What was said in that conversation that you had with Mr. Goodman about obtaining a license?”

\* \* \* \* \*

“A. I gave him the list, and I told him to obtain the license.

Q. What did he say? A. He said he would try.

Q. What list were you referring to? A. A number of articles on there. [20].

Q. Were there any articles or industrial diamonds on the list? A. Yes; that was also on there.” [R. 21.]

“I had a conversation with Goodman concerning the samples at my home. No one else was present. I said I did not think the quality of the merchandise was very good; the color wasn’t good. That is when we decided to go together to Keeler’s place. I first went to Musto-Keenan Co. about a week or ten days after I received the samples. I went with Goodman and met Keeler. In the presence of the three of us, I said I wanted to purchase some more diamonds. Keeler explained the diamonds to me and asked me what I was going to use them for.

Q. What did you say to him? [22.] A. I told him I did not know anything at all about diamonds;

but I gave him the name of the people that sent me the order from Japan.

Q. Did you tell him where they were going to?

A. I don't think I said anything at that time."

\* \* \* \* \*

"Q. Did you say anything to him about the people who had requested you to get the diamonds? A. No, I did not.

Q. When did you first have a conversation with Mr. Keeler in which you told him where the diamonds were going to? A. I did not tell him definitely where they were going."

\* \* \* \* \*

"Q. What did you say to Mr. Keeler? A. I said this: I told him that I had received an order from Japan for these diamonds, and I told him that I had myself had no experience with these diamonds or any diamonds; and I said I was going to trust Mr. Keeler entirely, and I asked him to take that responsibility and to go ahead with it.

Q. What did he say? A. He said that anything he would handle that I would not have to be afraid of losing any money on it.

Q. Now, was Mr. Goodman present when this conversation took place? A. Yes; he was always there with me." [R. 23-25.]

Cross-examination of Takahashi:

"Q. Now, then, you mentioned some letters from Japan. What letters did you get from Japan? A. I got all kinds of letters from Japan.

Q. Did you get any letters from Japan on industrial diamonds? A. Yes.

Q. When: How long ago? A. Also in July and August.

Q. They were written in Jananese to you, I suppose? A. Yes.

Q. You didn't show anything like that to Mr. Goodman, did you? [31.] A. No, I did not.

The Court: Did you tell him the contents of the letters?

The Witness: Yes.

The Court: What did you tell him?

By Mr. Cohen:

Q. What did you tell him about that? A. I told him that they referred to the quality.

Q. Did you ever tell Mr. Goodman the name of any Japanese company that you were doing business with?"

\* \* \* \* \*

"The Witness: No, I never told him.

The Court: Did you tell him who you were buying the diamonds for?

The Witness: No. All I told him was that I was going to send it to Japan.

By Mr. Cohen:

Q. When did you tell him that? A. Right from the beginning.

Q. Was there any export order—did you know whether you could send diamonds to Japan then or



not? A. That is why I asked Mr. Goodman to get an export license for me.

Q. And did you know whether or not anybody ever had an export license at that time to send anything to Japan? A. I don't know anything at all about that.

Q. When was the first time the words 'export license' were ever mentioned to you? Wasn't it after you were arrested?

\* \* \* \* \*

The Witness: No, it was not." [32.]

"Q. When was the first time that you learned that you had to get an export license? A. The first time that I gave Mr. Goodman the list of merchandise.

Q. Who told you then? Where did you get that information from? A. I do not know from any particular person that I heard it, but I knew that I had to have an export license.

Q. Well, where did you learn it? A. I don't remember." [R. 35-37.]

From a written statement of appellant, given to FBI Agents [R. 64-68]:

"I presumed H. H. G. that it was illegal to export diamonds without a license H. H. G. but I did not know whether or not Takahashi planned to export these industrial diamonds. Takahashi gave several different reasons for wishing to purchase diamonds. At one time in July, August or September, 1941, he told me, 'I cannot pay for H. H. G. the diamonds

until the ship gets in.' On another occasion during this period he said, 'I will pay you your commissions when the boat arrives.'" [R. 66.]

Direct examination of appellant:

"Takahashi never said to Keeler or myself that he intended to ship these diamonds to Japan, or that he had a customer in Japan to whom he intended to ship diamonds. [R. 102.]

I never entered into an agreement or understanding with Takahashi, Takizawa, Nakauchi, Keeler or anyone else to export [82] diamonds to Japan. I did not know that Takahashi had intentions of sending diamonds to Japan without a license. It was not discussed with me. Takahashi did not tell me that he had no license nor did he ask me to obtain one for him. I never attempted to obtain a license to export diamonds to Japan." [R. 105-106.]

Cross-examination of appellant:

"The Witness: I was associated in business with a company formed by Takahashi and known as the Tio Bussan Company. That company ceased doing business approximately March 27th of this year. I knew that Takahashi had been in the import-export business and that he had been established here for a number of years in some kind of curio store. I knew that Takahashi exported women's stockings a year or two ago, in the fall of 1939." [R. 106.]

"I never asked him what he had done with the diamonds or why he did not sell them. Takahashi did not say anything about a license." [R. 108.]

Redirect examination of appellant:

By Mr. Cohen:

“The Witness: In my statement where I said, ‘I presumed it was illegal to export diamonds,’ when he wrote that, he put that in. I tried to change the wording around so that it would mean that I presumed at the time. I had a splitting headache all night the night before.” [R. 112-113.]

Testimony of Takizawa, one of the defendants, who appeared as a witness for the government:

“Takahashi, Goodman, Keeler and myself met again at the same place and had a conversation. Takahashi said that the quality of the diamonds was not very good. Keeler answered that according to the price it was the best.

Q. Was anything else said? A. Mr. Takahashi said that there was a big order coming from Japan and he wanted Mr. Keeler to be very careful about the quality.

Q. Did Mr. Keeler say anything in response to that? A. He said it would be all right.” [R. 47.]

## II.

### Argument.

Appellee will confine its argument to that part of the Court's opinion which states:

“Even if the appellant did know the ultimate destination of the diamonds, there is not a word from which the jury could properly infer that he knew they were to be exported without a license. The only expression in the evidence upon the subject was from Takahashi who suggested that appellant help him procure a license, and this, of course, is far from evidence that it was the intent that no license should be obtained. The evidence creates no more than a suspicion.”

It is urged that the jury had competent and substantial evidence before it that fairly tended to prove the facts charged. It undoubtedly determined that the appellant, Goodman, had knowledge that the industrial diamonds purchased through him were to be sent to Japan; that it believed Takahashi's testimony with reference to requesting appellant to obtain a license to export the diamonds; that it considered appellant's statement to the Federal Bureau of Investigation Agents admitting his knowledge that it was illegal to export the diamonds without a license and the appellant's denial of the fact that he knew the diamonds were to be exported; that it considered the testimony of appellant in which he denied that Takahashi told him that he did not have a license and denied

that Takahashi had asked appellant to obtain a license to export diamonds to Japan.

In the case of *Ghadiali v. United States*, 17 F. (2d) 236, 237 (C. C. A. 9th), the Court said:

“The jury had before it all of the witnesses, could observe their demeanor, the reasonableness of the story, the opportunity of the witnesses for knowing the things about which they testified, the interest or lack of interest in the result of the trial, and all other disclosed circumstances bearing upon the credibility of the witnesses, and could determine where the truth in the case lay, and, if there is any evidence upon which rational minds might arrive at a like conclusion, this Court cannot reverse the finding.”

In the case of *Rendleman v. United States*, 38 F. (2d) 779, 780 (C. C. A. 9th), the Court said:

“Neither trial nor appellate court can invade province of jury touching credibility of witnesses and inferences to be drawn from testimony, where different inferences may reasonably be drawn.”

In the case of *Terry v. United States*, 51 F. (2d) 49, p. 53 (C. C. A. 4th), the Court said:

“The jury saw and heard the witnesses, including appellant, and observed their demeanor while they were testifying. In such cases the court may not invade the province of the jury and substitute its judgment for that of the jury on the weight and credibility to be accorded to the testimony of witnesses.”

Wherefore, appellee respectfully submits that its petition for rehearing should be granted.

Respectfully,

WM. FLEET PALMER,  
*United States Attorney,*

LEO V. SILVERSTEIN,  
*Assistant U. S. Attorney,*  
*Attorneys for Appellee.*

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### **Certificate of Counsel.**

I, Leo V. Silverstein, one of the attorneys for appellee and petitioner in the above entitled cause, hereby certify that the foregoing petition for a rehearing is, in my judgment, meritorious and that said petition is presented in good faith and not for purposes of delay.

LEO V. SILVERSTEIN,  
*Counsel for Appellee.*